

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

MEDALLION FINANCIAL SERVICES, LLC,

Plaintiff,

v.

Case No:

ODES INDUSTRIES LLC,

Defendant.

COMPLAINT FOR BREACH OF CONTRACT

COMES NOW, Plaintiff, Medallion Financial Services, LLC (“MFS”), by and through undersigned counsel and files this Complaint for Breach of Contract against Defendant, ODES Industries, LLC (“ODES”) and would state as follows:

PARTIES

1. MFS is a limited liability company existing under the laws of the state of Tennessee.
2. ODES is a limited liability company existing under the laws of the state of Texas and can be served with process through its registered agent, Michael G. Smith, at 2007 Royal Lane, Ste. 100, Dallas, TX 75229.

JURISDICTION

3. This Court has jurisdiction under 28 U.S.C. § 1332 as the parties are completely diverse and the amount in controversy exceeds \$75,000.
4. Venue is proper under 28 U.S.C. § 1391.
5. This is an action for breach of contract.

BACKGROUND AND FACTS

6. ODES operates as a distributor of ATVs, UTVs and other off-road vehicles (the “Products”) to dealers who then market and sell the Products to third-party consumers.

7. MFS provides floor-plan financing to certain dealers so that such dealers can purchase the Products from ODES and thereafter sell the same to third-party consumers.

8. As a condition precedent to providing financing to a dealer, in this case OK Auto Sales, LLC, a Mississippi limited liability company (“OK Auto”), MFS requires that the distributor, in this case ODES, sign an agreement whereby the distributor agrees to repurchase/repossess the financed inventory upon demand or upon the occurrence of certain circumstances as provided in such written agreements.

9. Accordingly, as part of a financing agreement with OK Auto for the purchase of the Products, MFS and ODES entered into a certain Distributors Agreement dated November 29, 2017, a copy of which is attached hereto and incorporated herein by reference as **Exhibit A** (the “Agreement”).

10. Section 3 of the Agreement provides as follows:

“*Upon notice* by MFS of a default by a Dealer in its obligations to MFS Distributor will thereupon purchase *upon demand*, MFS’s interest in such Product from MFS that are in “New” or “Like New/Very Lightly Used” condition, normal wear and tear incident to display excepted, and wherever located whether still in the possession of the Dealer or in the possession of MFS or Distributor. “New or Like New/Very Lightly Used”

condition is defined as a unit that has under 30 miles and has all parts, accessories intact and is in sound operation condition with little to no signs of physical damage or wear. *Distributor will pay to MFS in cash an amount equal to the total unpaid balance (not to exceed the price on the original invoices purchased by MFS) owing for such piece or pieces of Product, including, if applicable, all costs of repossession including attorney fees and court costs.”* (emphasis added)

11. MFS notified ODES on July 9, 2019 that OK Auto defaulted under its agreement with MFS as a result of its failure to pay interest related to the financing provided by MFS and demanded that ODES repurchase and repossess the Products as provided in the Agreement, and in breach of the Agreement, ODES refused.

12. All of the financed Products currently being held for sale at OK Auto are in New, Like New, or Very Lightly Used condition as defined in the Agreement.

COUNT ONE

BREACH OF CONTRACT

13. Paragraphs 1-11 are incorporated herein by reference.

14. ODES entered into the Agreement with MFS whereby it was obligated to repurchase and repossess the Products upon demand by MFS.

15. ODES refused to comply with the repurchase requirement contained in the Agreement.

16. ODES refusal to repurchase the Products is a breach of the Agreement.

17. Such breach is material as a matter of law and has injured MFS financially, and ODES is therefore liable to MFS for the damages caused thereby.

WHEREFORE, MFS requests the following relief:

1. The Court award a judgment against ODES for the amount of the total unpaid balance owing for the Products pursuant to the Agreement, such amount being in excess of \$75,000.
2. The Court award MFS all allowable costs incurred by MFS including discretionary costs, reasonable attorneys' fees, litigation costs, and court costs as provided in the Agreement.
3. The Court award such other relief as the Court may deem appropriate.

Respectfully submitted,

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By:/s/Ross E. Webster

Ross E. Webster (TN#24784)

EXHIBIT A

DISTRBUTORS AGREEMENT DATED NOVEMBER 29, 2017

[to immediately follow]

4819-3571-3180, v. 1